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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,588	04/04/2006	Keiichi Hirano	Q94096	3962
23373 7590 07/29/2010 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER PERREIRA, MELISSA JEAN				
ART UNIT		PAPER NUMBER		
1618				
NOTIFICATION DATE		DELIVERY MODE		
07/29/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/574,588

Applicant(s)

HIRANO, KEIICHI

Examiner

MELISSA PERREIRA

Art Unit

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2010.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
4a) Of the above claim(s) 6-10 and 12 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-5 and 11 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claims 1-12 are pending in the application. Claims 6-10 and 12 are withdrawn from consideration. Any objections and/or rejections from previous office actions that have not been reiterated in this office action are obviated.

Response to Arguments

1. Applicant's arguments filed 6/23/10 have been fully considered but they are not persuasive.
2. Claims 1-5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamazaki et al. (US 5,932,178) in view of Osaki et al. (JP 08-325169) and in further view of Coulter et al. (US 2,576,264) as stated in the office action mailed 3/25/10.
3. Applicant asserts that one of ordinary skill in the art would not have been motivated to use carbon dioxide gas in the process of Yamazaki et al. at least because Coulter et al. is a nonanalogous art that would not have been considered by one of ordinary skill in the relevant art.
4. The reference of Coulter et al. was used to teach that helium and carbon dioxide are used as analogous drying gases/media in the drying process of Coulter et al. and thus they can be used interchangeably for other processes.
5. As stated in KSR, "[T]he second error of the Court of Appeals lay in its assumption that a person of ordinary skill attempting to solve a problem will be led only to those elements of prior art designed to solve the same problem (KSR INT'L CO. v. TELEFLEX INC. Opinion of the Court p16, second full paragraph).

6. Applicant asserts that Hyodo et al. teaches away from using carbon dioxide gas in a conventional ^{18}F recovery method due to many drawbacks.
7. The reference of Hyodo et al. is irrelevant as it is not used in the existing rejection.
8. Applicant asserts that unexpectedly high production yields of fluorine compound using carbon dioxide gas, when compared to the yields of fluorine compounds produced by the method of Yamazaki et al., which utilizes helium gas.
9. An affidavit or declaration under 37 CFR 1.132 must compare the claimed subject matter with the closest prior art to be effective to rebut a prima facie case of obviousness. In re Burckel, 592 F.2d 1175, 201 USPQ 67 (CCPA 1979). MPEP §716.02(e) [R-2]
10. Applicant asserts that Coulter et al. is nonanalogous prior art which would not have been considered by a person skilled in the art, in an improvement for producing radioactive-fluoride labeled compound. To rely on a reference under 35 U.S.C. § 103, it must be analogous prior art.
11. The reference of Coulter et al. was used to teach that helium and carbon dioxide are used as analogous drying gases/media in the drying process of Coulter et al. and thus they can be used interchangeably in other processes.
12. As stated in KSR, "[T]he second error of the Court of Appeals lay in its assumption that a person of ordinary skill attempting to solve a problem will be led only to those elements of prior art designed to solve the same problem (KSR INT'L CO. v. TELEFLEX INC. Opinion of the Court p16, second full paragraph).

13. Applicant asserts that Coulter et al. is not such a reference that would have logically commended itself to an inventor developing a process for producing a radioactive-fluoride labeled compound. Rather, Coulter et al. discloses an apparatus for spray drying of food particles, such as milk or eggs. The apparatus of Coulter et al. does not utilize an anion-exchange resin and is not used to dry columns which produce radioactive fluoride ions. Thus, contrary to the Examiner's assertions, Coulter et al. does not describe "analogous" drying gases/media.

14. The reference of Coulter et al. was used to teach that helium and carbon dioxide are used as analogous drying gases/media in the drying process of Coulter et al. and thus they can be used interchangeably in other processes.

15. As stated in KSR, "[T]he second error of the Court of Appeals lay in its assumption that a person of ordinary skill attempting to solve a problem will be led only to those elements of prior art designed to solve the same problem (KSR INT'L CO. v. TELEFLEX INC. Opinion of the Court p16, second full paragraph.

Conclusion

16. No claims are allowed at this time.

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA PERREIRA whose telephone number is (571)272-1354. The examiner can normally be reached on 9am-5pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael G. Hartley/
Supervisory Patent Examiner, Art Unit 1618
/Melissa Perreira/
Examiner, Art Unit 1618

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Art Unit: 1618

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